

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Travis Deshun Nicholson,)	Civil Action No. 3:09-3063-CMC -JRM
)	
Plaintiff,)	
)	
-vs-)	
)	REPORT AND RECOMMENDATION
Major Anderson, Capt. Middleton, Head Nurse)	
McFatten,)	
)	
Defendants.)	
_____)	

This action has been filed by the Plaintiff, *pro se*, pursuant to 42 U.S.C. § 1983. Plaintiff, who at the time this action was filed, was an inmate at the Greenwood County Detention Center, alleges violations of his constitutional rights by the named Defendants.

The Defendants Anderson and Middleton filed a motion to dismiss for failure to prosecute on March 8, 2010. Defendants state in their motion that their Answer filed with the Court on March 2, 2010, and mailed to Plaintiff at the address provided by the Plaintiff, was returned marked "Return to Sender". A copy of the envelope dated March 2, 2010 is attached to Defendants' motion. Defendants further state in the motion to dismiss that "upon information and belief, the plaintiff, Travis Deshun Nicholson, was released from the Greenwood County Detention." As the Plaintiff is proceeding *pro se*, an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) were entered by the Court on March 9, 2010, advising Plaintiff of the importance of a dispositive motion and of the need for him to file an adequate response. Plaintiff was specifically advised that if he failed

to respond adequately, the Defendants' motion may be granted. On March 16, 2010, Plaintiff's copy of the Roseboro order issued March 9, 2010, was returned to the Clerk of Court with the envelope being marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward."

The undersigned notes that when Plaintiff filed this action, he was specifically instructed as follows:

You are ordered to always keep the Clerk of Court advised **in writing**...if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to file something you are required to file within a deadline set by a District Judge or a Magistrate Judge, your case may be dismissed for violating this order. Therefore, if you have a change of address before this case has ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address....**Your failure to do so will not be excused by the Court.** (emphasis added)

See Order filed January 26, 2010.

Plaintiff has failed to comply with this order, and as a result neither the Court nor the Defendants have any means of contacting him concerning his case.

Based on the foregoing, and the previous instructions and specific warning given to the Plaintiff in the Court's order of January 26, 2010, it is recommended that this action be **dismissed, with prejudice**, in accordance with Rule 41(b), Fed.R.Civ.P. The Clerk is directed to send this Report and Recommendation to Plaintiff at his last known address.

If the Plaintiff notifies the Court within the time set forth for filing objections to this Report and Recommendation that he wishes to continue with this case and provides a current address, the Clerk is directed to vacate this Report and Recommendation and return this file to the undersigned for further handling. If, however, no objections are filed, the Clerk shall

forward this Report and Recommendation to the District Judge for disposition.



Joseph R. McCrorey
United States Magistrate Judge

Columbia, South Carolina

March 24, 2010

The parties are referred to the Notice Page attached hereto.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).